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declaration alleged that defendant carelessly and negligently permitted logs being floated by defendant in the stream to pile up on the banks in heaps or jams, which turned the water from the channel upon plaintiff's land. Held, that the declaration was demurrable in that it failed to charge facts constituting negligence.

BLACK'S ADM'R *v.* VIRGINIA PORTLAND CEMENT CO.

Nov. 22, 1906.

[55 S. E. 587.]

1. Master and Servant—Risks Assumed.—In an action for an injury resulting in the death of plaintiff's intestate while employed in defendant's quarry, it appeared that the rock which fell on deceased had been loose for some time, and that there was a water seam around it, which was seen by other employees working in the quarry at a place removed from the place at which deceased was put to work. Defendant's inspector, whose duty it was to keep the quarry in a safe condition, testified that the condition of the rock could have been seen from certain places, but not from where deceased was at work, and that he had never inspected it, as he did not suppose it would be dangerous. Held, that the risk was not one that was assumed by defendant as incident to his employment.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 557.]

2. Same—Places for Work—Knowledge of Master.—Proof that the master, in the discharge of his duty to keep the place where his servant is required to work in a reasonably safe condition could, by the exercise of reasonable or ordinary care, have ascertained that the place was not reasonably safe, is proof of knowledge on his part that it was not safe.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 966.]

3. Same—Action for Injury—Issues and Proof.—In an action for injuries to a servant employed in defendant's quarry, where the declaration alleged that it was the duty of defendant to keep and maintain its quarry in a reasonably safe condition, and that it neglected this duty, plaintiff was entitled to show that defendant had failed to make proper inspection of its quarry just prior to the injuries.

4. Same—Fellow Servants—Superintendence.—Where the duty of a stone company to keep its quarry in a reasonably safe condition devolved upon its foreman, whose duty it was to inspect the quarry, in the discharge of such duty such foreman was not the fellow servant of workmen in the quarry.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, §§ 393, 456-465.]

5. Same—Actions—Questions for Jury—Knowledge of Master.—

In an action for an injury resulting in the death of a servant while working in defendant's quarry, held, that it was for the jury to determine whether defendant could have, by the exercise of reasonable or ordinary care, known of the danger to which deceased was subjected.

6. Same—Proximate Cause.—In an action for an injury resulting in the death of a servant while employed in defendant's quarry, held, that it was for the jury to determine whether or not the negligence of defendant was the proximate cause of death.

7. Same—Contributory Negligence.—In an action for an injury resulting in the death of a servant while employed in defendant's quarry, held, that it was for the jury to determine whether or not deceased was guilty of contributory negligence.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 1089.]

8. New Trial—Weight of Evidence.—The verdict of the jury should not be disturbed by the trial court, unless plainly against the weight of the evidence.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, New Trial, §§ 130, 146-148.]

APP et al. v. APP et al.

Dec. 6, 1906.

[55 S. E. 672.]

1. Wills—Construction—What Law Governs.—A will must be construed according to the law of the state where testator died, the will was probated, his executors qualified, and his estate distributed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, §§ 947-950.]

2. Evidence—Foreign Laws—Judicial Notice—Proof.—Courts cannot take judicial notice of the laws of another state, but they must be proved as a fact.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 20, Evidence, § 51.]

3. Wills—Construction—Estates Conveyed.—Where testator devised his property to his seven children in equal shares, and directed that, should any of his children die without leaving issue, then the share of that child should be divided among the surviving children, the will should be construed according to the law of Pennsylvania, where testator resided at the time he died, as contemplating the death of children without issue during testator's life, and therefore vested a fee in such children as survived him.

4. Same—Evidence.—Where testator, after bequeathing the residue of his estate to his children in equal shares, directed that, if any